March 5, 2009

WASHINGTON, D.C.—To avoid an estimated 8.1 million additional homeowners from defaulting on their mortgages over the next four years—with potentially 5 million homes lost through foreclosure or short sales—Congressman Joe Sestak (PA-07) today voted for H.R. 1106, the Helping Families Save Their Homes Act, which passed by a vote of 234 to 191. This measure is the first step in implementing President Obama's comprehensive Homeowner Affordability and Stability Plan.

"This bill will begin to provide homeowners the assistance they need and will help restore stability to the housing and mortgage markets. But it's important that the American people understand that this bill does not reward irresponsible behavior or provide people a quick escape through bankruptcy," said Congressman Sestak. "The measures we're implementing are necessary, not easy."

To get more families into affordable mortgages, the bill protects lenders from lawsuits for reasonable loan modifications and fixes the Federal Housing Administration's HOPE for Homeowners program by reducing current fees that have discouraged lenders from participating voluntarily. The HOPE for Homeowners program, passed in February, was designed to help 400,000 homeowners modify their loans. However, because there was insufficient incentive for lenders and prohibitive costs for borrowers, only 27 mortgages have been modified through the program. This legislation will incentivize the program to make it attractive and useful for lenders and borrowers.

This bill also offers new incentives for lenders to negotiate loan modifications with borrowers at risk of foreclosure. As a last resort, the bill allows bankruptcy judges to modify the terms of loans for families with existing mortgages under extremely limited circumstances (just as investors in vacation homes, real estate speculators, and corporations have been able to do for years). The bill also further protects consumers' savings in Banks and Credit Unions by making permanent an increase from $100,000 to $250,000, in the amount insured by regulators for each account held by a consumer at a bank or credit union.

"The root of our present financial crisis lies in the turmoil that hit the housing market, spread rapidly through the financial system, and has now impacted all sectors of the U.S. and global economy," the Congressman said. "Equifax estimates that 14 million homeowners hold mortgages that are higher than the current market value of their house. Of these, 6.4 million mortgages are underwater by 10%, and 3.4 million are 20% underwater. Coupled with rising unemployment, the risk of default on these mortgages is increasing dramatically.

"While a number of efforts have been undertaken by various government agencies and financial institutions to address the rising level of foreclosures and delinquencies through various forms of loan modifications, it appears that they have been overwhelmed by the growing tide of foreclosures, defaults, and delinquencies. We must also prepare for the next wave of Adjustable Rate Mortgages (ARM) that will reset over the next two years.

“This legislation protects Americans struggling to keep their homes by limiting the downward cycle of foreclosures that are damaging our neighborhoods. It also protects the financial institutions that try to do right by their lenders and it ensures that judicial modification is considered only after every reasonable effort has been taken to achieve voluntary modification outside bankruptcy,” said Congressman Sestak.

Specifically, the bill includes provisions to support:
Judicial Modifications of Home Mortgages During Bankruptcy for Borrowers Who Have Run Out of Options:
The bill permits bankruptcy courts to adjust the terms of mortgages on primary residences undergoing foreclosure during Chapter 13 bankruptcy proceedings under the very limited conditions listed below. The bill permits bankruptcy courts to reduce, to the current market value of the home, the principal owed through a mortgage on primary residences, instead of the amount specified in the original mortgage. It also permits bankruptcy courts to reduce the interest rate in the mortgage, or fees associated with the mortgage. These options are the same that are currently available in bankruptcy proceedings for second homes, vacation homes, or investment properties. Under current law, every other class of asset is eligible for judicial modification.
This relief is extended only to mortgages that originated prior to the Act’s date of enactment so that bankruptcy judges can modify mortgages only after families have exhausted every other option, and includes a number of major limitations, including:

Mandates a process by which no debtor may obtain a judicial modification unless he or she first, over a 30-day period, contacts the lender, submits relevant financial information to the lender, and attempts to agree to a mutually agreeable qualified loan modification (such as Hope Now or the newly proposed Obama Administration plan) outside bankruptcy.

Prohibits judicial modification where the debtor engaged in bad faith, such as filing for bankruptcy even though he or she could otherwise afford to pay the mortgage.

Requires the bankruptcy court to use FHA appraisal guidelines and to insist on equal monthly payments.

Establishes a nationwide mortgage task force within the Department of Justice.

Requires studies by the GAO and the banking agencies to examine the impact of the new law, recommend further limitation, and review the conduct of bankruptcy judges overseeing the law.

Limits the legislation to existing mortgages only, that is to say it would not apply to any future mortgages, thereby ensuring that it would not impact future credit availability or interest rates.

Includes a “claw back” provision specifying that increases in property values over the first four years of the bankruptcy plan are to be returned to the lender, based on a sliding scale.

Specifies that FHA, VA, and related guaranties are to be fully honored in case of loan modifications, both inside and outside of bankruptcy.

Prevents any debtor convicted of fraud in obtaining his or her mortgage from seeking relief through a judicial modification.

Specifies that senior groups of bonds secured by mortgages are not required to share losses incurred by junior bonds resulting from judicial modification as a result of so-called “bankruptcy carve-out” agreements.

Additional and Related Restrictions and Guidelines

The bill contains additional specific restrictions and guidelines for the program, and contains numerous provisions to better ensure that predatory lending entities and individuals are not allowed to participate in the FHA home mortgage insurance program. Specifically, the bill:

- Requires the homeowner facing foreclosure to attempt to notify the lender before he or she can apply for judicial modification.
- Prohibits a borrower convicted of fraud in obtaining the mortgage from being allowed to modify his or her mortgage under this legislation.
- Does not rewrite the 2005 Bankruptcy Code amendments as the prohibition on modifying primary mortgages dates back to 1978 when most mortgages were 30-year fixed rate loans owned by the local bank rather than rapidly adjusting ARMs that have been sold to investors in slices around the world.
- The bill is structured to encourage families to pay their mortgages to the greatest extent that they are able.
- Does not increase the cost of borrowing for other homeowners, because compared to the sole alternative of foreclosure this measure would maximize, not lessen, the value of troubled mortgages for the lender and not result in additional costs to recoup. And, the bill is limited to existing mortgages, i.e., mortgages that originated prior to the date of enactment of the Act.
- FHA Approval Provisions:
- Require HUD approval of all parties participating in the FHA single family mortgage origination process.
- Allow HUD to impose a civil money penalty against loan originators who are not HUD-approved and yet participate in FHA mortgage originations.
- Make clear that an applicant is ineligible for approval if the entity or any officer, partner, director, principal, or employee of the entity is: a) suspended or debarred by any Federal agency; b) under indictment for, or has been convicted of, an offense that reflects adversely upon the applicant’s integrity, competence or fitness to meet the responsibilities of an approved mortgagee; c) subject to unresolved findings contained in a HUD or other governmental audit, investigation, or review; d) engaged in business practices that do not conform to generally accepted practices of prudent mortgagees; e) convicted of a felony related to participation in the real estate or mortgage loan industry; or f) in violation of provisions of the S.A.F.E. Mortgage Licensing Act.
- Require that HUD receives notice of the debarment and any change in licensing status of a

FHA approved mortgagee.
• Require HUD to expand the existing FHA process of reviewing new applicants for FHA approval for the purpose of identifying those representing a high risk to the Mutual Mortgage Insurance Fund and implement procedures that expand the number of loans reviewed by FHA for lenders approved within the last 12 months, and include a process for random reviews that is based on loan volume by newly approved participants.
• Require FHA approved mortgagees to use their HUD registered company names in all advertizing and to keep copies of all advertisements.

HOPE for Homeowners
The bill amends the HOPE for Homeowners Program provisions of the National Housing Act to encourage more lenders to participate by reducing the fees and write-downs, provide incentives for mortgage servicers to engage in modifications under the Program, and reduce administrative burdens to loan underwriters by making the requirements more consistent with standard FHA practices. Specifically, the bill would:
• Permit payments to existing servicers of up $1,000 for each successful refinance.
• Put the HUD Secretary in charge of running the program, leaving the Program Board's role as an advisory capacity.
• Change the upfront fee from 3% to "up to 2%."
• Change the annual fee from 1.5% to "up to 1%."
• Require the HUD Secretary to weigh both maximization of participation and collection of premiums when setting upfront and annual fees.
• Provide for "up to 50%" of appreciation profit share (instead of requiring 50%) and allow the sharing of this profit with the existing first lender to induce loan writedowns.
• Cap profit sharing at up to the appraised value of the property when the existing loan was made.
• Re-instate authority to conduct an auction to refinance loans on wholesale or bulk basis.
• Include a number of administrative changes, including:
• requiring conformity to FHA endorsement policies, as much as possible;
• eliminating the March 1, 2008 income affordability test;
• eliminating certification of no intentional default on other debts, applying certification of no false information being provided to the new FHA refi loan, and eliminating reference to going to jail because of false statements;
• providing for less prescriptive language regarding collection of income tax returns;
• requiring HUD to conform program documents, forms, and procedures to those in place for regular FHA loans;
• eliminating extraneous LTV restrictions on use of second lien loans to maintain property; and
• barring borrowers with a net worth of more than $1 million.
• Offset: Reduces existing TARP authority by $2.316 billion to offset cost of program changes.
Incentives for Negotiating Affordable Home Loans:
• Fixes to the FHA's Hope for Homeowners program enacted as part of the comprehensive housing reform legislation from last summer. These changes specifically outlined as part of the President's housing package:
• Lower fees paid by borrowers and lenders.
• Provide $1,000 payments to servicers for each successful refinance of existing loans.
• Provides mortgage servicers with clarity and certainty for their actions, and protection from

lawsuits for specified loan modifications. Mortgage servicers are concerned about the threat of investor lawsuits if they help families in danger of losing their homes with loan modifications. This provision is critical to the success of the President's initiative by protecting servicers that take part in loan modification programs.

- Helps veterans and other homeowners to avoid foreclosure by allowing the Department of Veterans Affairs, the Federal Housing Administration, and U.S. Department of Agriculture to guarantee and/or insure mortgage loans modified either out of court or in a bankruptcy case. This will provide financial incentives for lenders to voluntarily modify mortgage loans in lieu of foreclosure. This authority is an important provision detailed in the President's housing package.
- Expands the FHA's mortgage loan modification abilities to keep more people in their homes and thereby reduce foreclosures by allowing a reduction of interest payments of up to 30 percent of the outstanding loan balance.
- Prevents predatory lenders from being approved as lenders under the FHA programs.

Foreclosure Prevention

The bill contains specific foreclosure prevention provisions including:

- Assistance for veterans and other homeowners to avoid foreclosure by allowing the Department of Veterans Affairs, the Federal Housing Administration, and U.S. Department of Agriculture to guarantee and/or insure mortgage loans modified either out of court or in a bankruptcy case. This will provide financial incentives for lenders to voluntarily modify mortgage loans in lieu of foreclosure.
- Expansion of the FHA's mortgage loan modification abilities to keep more people in their homes and thereby reduce foreclosures by allowing a reduction of interest payments up to 30% of the outstanding loan balance.
- Permits the mortgage's repayment period to be extended reduced so that the mortgage is more affordable.
- Authorizes an exorbitant mortgage interest rate to be reduced to a level that will keep the mortgage affordable over the long-term while also compensating creditors appropriately for risk.
- Waives the bankruptcy counseling requirement for families for whom foreclosure will soon commence, so that precious time is not lost as families fight to save their homes.
- Ensures lenders provide proper notice when assessing fees and allow judges to waive prepayment penalties.
- Maintains debtors' legal claims against predatory lenders while in bankruptcy.

Servicer Safe Harbor: The bill provides a safe harbor from liability to mortgage servicers who engage in loan modifications workouts or other loss mitigation, regardless of any provisions in a servicing agreement, so long as the servicer acts in a manner consistent with the duty established in Homeowner Emergency Relief Act. The bill also requires mortgage servicers who modify loans under the safe harbor to regularly report to Treasury on the extent, scope and results of the servicer's modification activities.

Deposit Insurance

The bill amends the Federal Deposit Insurance Act and the Federal Credit Union Act to enhance the liquidity and stability of insured depository institutions to ensure availability of credit and reduction of foreclosures. Specifically, the bill would:

- Make permanent the temporary increase in deposit insurance coverage for both the FDIC

Deposit Insurance Fund and the National Credit Union Administration (NCUA) Share Insurance Fund to $250,000 (the temporary increase is currently scheduled to sunset on December 31, 2009), and include an inflation adjustment provision for future coverage.

- Extend the time limit for an FDIC Restoration Plan to rebuild the reserve ratio of the Deposit Insurance Fund from 5 years to 8 years. Establish a 5-year restoration plan for the NCUA, which is currently required to restore the equity ratio of the Share Insurance Fund within one year.
- Increase the FDIC's borrowing authority from the Treasury Department from $30 billion to $100 billion and the NCUA’s Share Insurance Fund’s borrowing authority from $100 million to $6 billion.
- The FDIC borrowing authority amount has not changed since 1991, even though the size of the industry has tripled. The NCUA borrowing authority has not changed since 1972 when it was established, even though the size of the industry has increased from $13.8 billion in 1972 to $813 billion at year-end 2008.
- Any money borrowed must be repaid, with interest, pursuant to a repayment schedule that must be in effect prior to receiving any money, and which is subject to a requirement to consult with and report to Congress.
- Allow the FDIC to charge systemic risk special assessments by rulemaking, on both insured depository institutions and depository institution holding companies. For holding company assessments, the concurrence of the Secretary of the Treasury would be required.

Born and raised in Delaware County, former 3-star Admiral Joe Sestak served in the Navy for 31 years and now serves as the Representative from the 7th District of Pennsylvania. He led a series of operational commands at sea, including Commander of an aircraft carrier battle group of 30 U.S. and allied ships with over 15,000 sailors and 100 aircraft that conducted operations in Afghanistan and Iraq. After 9/11, Joe was the first Director of "Deep Blue," the Navy's anti-terrorism unit that established strategic and operations policies for the "Global War on Terrorism." He served as President Clinton's Director for Defense Policy at the National Security Council in the White House, and holds a Ph.D. in Political Economy and Government from Harvard University. According to the office of the House Historian, Joe is the highest-ranking former military officer ever elected to the Congress.